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SUPREME COURT, U.S.

# STATE OF NEBRASKA EX REL. NEBRASKA STATE BAR ASSOCIATION, RELATOR, V. KENNETH LEE MICHAELIS, RESPONDENT.

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Filed February 12, 1982. No. 42820.

1. **Attorneys at Law: Disciplinary Proceedings: Proof.** In disciplinary proceedings of members of the bar, the relator must establish the allegations in the formal charges by a clear preponderance of the evidence so the court is satisfied to a reasonable certainty that the charges are true.
2. _____: _____: _____. In disciplinary proceedings the findings must be sustained by a higher degree of proof than that required in civil actions, yet falling short of the proof required to sustain a conviction in a criminal case.
3. _____: _____: _____. In a proceeding for the disbarment of an attorney at law the presumption of innocence applies, and the charge made against him must be established by a clear preponderance of the evidence.

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4. **Attorneys at Law: Disciplinary Proceedings: Appeal and Error.** To determine whether and to what extent discipline should be imposed in a disbarment proceeding, it is necessary for this court to review the evidence de novo, considering the nature of the offense, the need for deterrence of others, maintenance of the reputation of the bar as a whole, protection of the public, the attitude of the offender generally, and his present or future fitness to continue in the practice of law.
5. **Attorneys at Law: Disciplinary Proceedings.** An attorney at law may be subjected to disciplinary action for conduct outside the practice of law or the representation of clients.
6. _____: _____. An attorney may be disciplined for criticism in the heat of a political contest if such criticism is carried beyond the limits of truth and fairness.

Original Action. Judgment of disbarment.

Paul L. Douglas, Attorney General, and Mel Kammerlohr for relator.

Kenneth Lee Michaelis, pro se.

Heard before KRIVOSHA, C.J., BOSLAUGH, MCCOWN, CLINTON, BRODKEY, and HASTINGS, JJ.

PER CURIAM.

This is an original disciplinary proceeding brought against the respondent, Kenneth L. Michaelis, an at-

not conflict with Nebraska's right-of-way statutes.

6. Intersection right-of-way is a qualified, not absolute, right to proceed through an intersection, exercising due care, in a lawful manner in preference to another vehicle.

7. An opinion of vehicular speed is proper, provided a sufficient foundation is laid to show the expertise of the witness, as well as specific knowledge of the underlying facts to deal with the question in issue.

8. No exact standard is possible for fixing the qualifications of an expert or skilled witness, and the ruling of a trial judge receiving or excluding an opinion will be reversed on appeal only when a clear abuse of discretion is shown. Herman v. Lee, p. 585.

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**Statutes**
**—Political Subdivisions**
**—Claims**

1. A statute is not to be read as if open to construction as a matter of course. Where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning. It is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of a court to read anything plain, direct, and unambiguous out of a statute.

2. When governmental officials, with full knowledge of all the facts pertaining to a claim, allow and pay it, the action is at least presumptively correct and is frequently termed conclusive. County of Douglas v. Board of Regents, p. 596.

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torney admitted to practice in this state by the State of Nebraska ex rel. Nebraska State Bar Association, the relator herein.

Following hearings held before the Committee on Inquiry of the Ninth Judicial District and The Advisory Committee, formal charges were filed against the respondent on November 29, 1978, arising out of his conduct during a 1978 campaign for the office of Cuming County attorney. The formal charges consist of four counts alleging that the respondent had violated the following Canons of Ethics and Disciplinary Rules of the Code of Professional Responsibility: Canon 1, DR 1-102(a)(1), (4), (5), and (6); DR 1-103(a); and Canon 2, DR 2-101(A). Additionally, upon the motion of the relator, four more charges were filed against the respondent relating to statements he made and his

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conduct during the pendency of this disciplinary proceeding. The additional charges allege that the respondent violated Canon 1, DR 1-102(A)(1), (5) and (6), and Canon 8, DR 8-102(B). In each instance it is alleged that the respondent engaged in conduct prejudicial to the administration of justice or in conduct tending to bring reproach, discredit, and disrespect upon himself, the courts, and the legal profession.

The referee appointed by this court held a hearing on the formal charges on June 30, 1980, and a hearing was held on the additional charges filed against respondent on February 24, 1981. The referee filed his report with this court on April 7, 1981, in which report he found that the respondent had violated the aforementioned disciplinary rules as set out in the charges. In his report filed in this matter with this court on April 7, 1981, the referee concludes by stating: "This Referee has been waiting for some evidence of sorrow or regret on the part of the Respondent that would give some assurance that the conduct herein disclosed will not be repeated. There have been no such expressions of regret nor has there

been any retraction by the Respondent of any of the charges he has made. His conduct before this Referee in several hearings has been exemplary and it has been difficult to associate the Resondent before us as the author of the documents received in evidence. This is some basis for hope of reformation. I have in my mind touched upon the thought of recommending outright disbarment but having regard to the short time this Respondent has been engaged in practice, his youth, having regard to the economic stake he has in his period of training and education for a legal career extended over his possible lifetime, and the well being of members of his family, and remembering also that it is not the purpose by this proceeding to punish but rather to reform, I recommend that the Respondent be suspended from practice in this State for a period of one year." Respondent has filed exceptions to the report of the referee and the matter has now been argued before

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this court.

Before discussing the merits of the allegations contained in the charges against the respondent, it will be helpful to set out established standards which govern the review by this court in disciplinary proceedings. We have held that the relator must establish the allegations in the formal charges by a clear preponderance of the evidence, so the court is satisfied to a reasonable certainty that the charges are true. *State ex rel. Nebraska State Bar Assn. v. Hollstein*, 202 Neb. 40, 274 N.W.2d 508 (1979); *State ex rel. Nebraska State Bar Assn. v. Rhodes*, 177 Neb. 650, 131 N.W.2d 118 (1964). The findings must be sustained by a higher degree of proof than that required in civil actions, yet falling short of the proof required to sustain a conviction in a criminal case. *State ex rel. Nebraska State Bar Assn. v. Hollstein, supra; State ex rel. Nebraska State Bar Assn. v. Richards*, 165 Neb. 80, 84 N.W.2d 136 (1957). In a proceeding for the disbarment of an attorney at law the presumption of innocence applies, and the

charge made against him must be established by a clear preponderance of the evidence. *State ex rel. Nebraska State Bar Assn. v. Hollstein, supra; State ex rel. Nebraska State Bar Assn. v. Pinkett,* 157 Neb. 509, 60 N.W.2d 641 (1953). To determine whether and to what extent discipline should be imposed in a disbarment proceeding, it is necessary for this court to review the evidence de novo, considering the nature of the offense, the need for deterrence of others, maintenance of the reputation of the bar as a whole, protection of the public, the attitude of the offender generally, and his present or future fitness to continue in the practice of law. *State ex rel. Nebraska State Bar Assn. v. Erickson,* 204 Neb. 692, 285 N.W.2d 105 (1979); *State ex rel. Nebraska State Bar Assn. v. Cook,* 194 Neb. 364, 232 N.W.2d 120 (1975).

Turning to the formal charges originally filed against the respondent in this matter, the first such charge concerns a political advertisement placed by Michaelis in the Wisner News-Chronicle, a newspaper of general



circulation in Cuming County. It appears from the evidence that Michaelis had been seeking nomination for the position of Cuming County attorney in an effort to unseat the incumbent county attorney. According to respondent, he placed the advertisement of April 13, 1978, with the newspaper for the purpose of announcing his withdrawal from candidacy for the county attorney position. The advertisement consists of four columns of the paper, one continuing onto a second page. Only one sentence in the first column and the last paragraph of the advertisement relate to Michaelis' withdrawal from the county attorney election. The bulk of the advertisement contains allegations of illegal and unethical conduct on the part of the incumbent county attorney and several other named attorneys in the Cuming County area. The article also contains several self-laudatory statements in reference to respondent.

The second formal charge is based upon a one-page document the respondent caused to be released on or about April 11, 1978, and is captioned as a statement to the press. This paper also contains allegations of illegal and unethical conduct on the part of several local attorneys. The statements contained therein cast aspersions by innuendo on the incumbent county attorney and the city attorney of West Point, Nebraska.

The third formal charge relates to a three-page document dated April 25, 1978, and circulated by the respondent. These pages repeat many of the allegations of impropriety alleged by respondent in his other publications.

The fourth formal charge is in regard to a one-page document captioned "Acceptance of Republican Nomination for Cuming County Attorney," and is dated June 5, 1978. This document alleges conspiracy on the part of three Cuming County officials in removing respondent's name from the April primary election ballot.

During the pendency of the investigation of the formal charges, respondent made several additional statements and caused to be filed with the Cuming



County Court certain documents which gave rise to the relator's motion of October 31, 1980, to incorporate additional charges against respondent. The first of these additional charges relates to a statement made by Michaelis to a newspaper reporter on or about October 7, 1980, which subsequently appeared on the front page of the West Point News on October 9, 1980. In the article Michaelis described the disciplinary proceedings brought against him, in part as follows: " 'The Nebraska Supreme Court is scared of this, because they know they have a dirty house, and if you have a dirty house, you don't open the windows . . . . And two attorneys have already committed perjury in this matter.' "

The second additional charge concerns a notice of disallowance of claim which the respondent caused

to be filed in the county court of Cuming County, Nebraska, on September 8, 1980. The document appears to disallow all but $5.78 of a claim filed by a local law firm against the estate of one Herman A. Melcher. The document contains a typed statement prepared by the respondent, which he caused to be signed by the personal representative of the estate. The statement reads in part: "The Melcher family fear that theft by some Cuming County lawyers was imminent if it did not already occur. The family states its full confidence in the first attorney retained [name omitted], Mr. Ken L. Michaelis, and they refuse to allow further theft from this estate by attorneys and their lust and greed."

The third additional charge pertains to a document entitled "Praecipe - Requisition for Transcript," and filed in the county court of Cuming County, Nebraska, on October 23, 1980. This document also contains derogatory claims made against area attorneys on the validity of their claims against the Melcher estate and, generally, upon the integrity of the courts and the judicial system.

The fourth, and last, additional charge filed in this case concerns a statement respondent issued on October 2, 1980, to radio staton WJAG/KEXL of Norfolk, Ne

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braska. The statement, which concerns the disciplinary proceedings filed against respondent, was recorded and broadcast to the public, and was as follows: "Never have I said anyone was guilty of bribery. Never have I done this. This is a blatant and apparent, this is a blatant lie. And apparently is perpetrated by the Nebraska Bar Association using and misusing the press and media. It is a typical smear campaign by what is probably in many people's mind the dirtiest profession in all of America today. Not just today, it was that way yesterday, and the day before that.

"At least prostitutes, and prostitution has a sense of fairness and some decency. The Nebraska State

Bar Association apparently has none.

"Not one of the many false allegations by this very ignorant committee of puppets and professional stooges of the Nebraska Bar Association is true. No one wants to look into the factual truth, for they fear opening a can of worms that finds the West Point City Attorney guilty of gross negligence, reckless and wanten [sic] malice, greed, and gross conflicts of interest for his own personal gain and selfish glory over the past 20-years. His name is [omitted]. Some of the same is true about [name omitted], our former Cuming County Attorney . . . ."

It is clear that the foregoing statements would clearly have a profound effect upon the minds of the reading and listening public, and could only serve to shake the confidence of the public in the legal profession. While the record in this case is voluminous and obviously cannot be quoted in full in this opinion, we have read the entire record and believe that all that is necessary to be discussed at this point is the testimony of the respondent, given under oath, in his original hearing held before the Committee on Inquiry, Ninth Judicial District, on November 14, 1978. We quote pertinent parts of respondent's testimony at that hearing. During his direct testimony, the respondent was asked: "Q Mr. Michaelis, in these various exhibits, you make some



general statements indicating that you have knowledge of unethical conduct on the part of attorneys in Cuming County, and also you make some allegations of what would amount to criminal conduct. Did you have any or do you now have any evidence of any such conduct on the part of any attorneys in Cuming County? A I don't think it could be construed that we made allegations against particular attorneys. . . . Q So all of your statements of that nature were based simply on what other people had said to you, is that right? A What other people had said to me. . . ." He was also asked: "Q Then, for purposes of

clarification, you know of no specific acts on the part of [name omitted] that would be in violation of the Code of Professional Responsibility — A No, no clear ones. No. Q — or the Nebraska statutes? A Or the Nebraska statutes. None that readily come to my mind. Q Another individual who has been mentioned specifically, [name omitted] — do you know of any specific conduct on his part that would be a violation of the Code or of any Nebraska Statutes? A Not clearly; not that I would clearly believe to be in violation. . . . Q Again, you know of no such conduct on the part of [name omitted]? A I'm not very knowledgeable of his affairs. Q You've made several allegations in regard to [name omitted], specific allegations. In connection with the salary increase, you stated, in Exhibit 1, 'smacks as a species of blackmail and bribery'. Do you know of any 'blackmail' or 'bribery' that [name omitted] was involved in? A No."

The respondent also responded to questions put to him at that hearing as follows: "Q Have you, or anyone on your behalf, made any complaints to this committee about unethical conduct of a lawyer in Cuming County or any other county in this district? A No, I have not. Q Did you ever complain to the Counsel for Discipline or any representative of the Bar Association? A No, I have not. Q Didn't you, in some of your correspondence, indicate that your letters to the pastors, with regard to making a donation to their church, was a mistake? A



Was a mistake? Q Yeah. A On my part? Q Yes. A I don't believe. I don't remember. I don't recall."

Finally, the respondent was asked: "Q Mr. Gushard [Counsel for discipline] has asked you about various attorneys. Do you have any evidence of dishonesty or unethical acts on the part of [name omitted]? A Just other than hearsay that mainly [name omitted] had made reference about. Q Other than the attorneys that have been mentioned, do you

have any evidence of dishonesty or unethical conduct on the part of any other attorneys in Cuming County or in this district? A Other than the ones that — Certainly, I have heard of the ones that have been disbarred, as far as that is concerned."

Respondent was also asked with reference to a letter written to St. Joseph's Catholic Church in Wisner, in which letter he stated that if he should become county attorney he planned to divide a portion of the salary to the various parishes. He was asked: "Q Do you see an ethical problem with such an offer as that? A Well, now that it has been brought on up, I do see; but at the time, that's the way one honestly felt, you know. Now, it could be construed as a ethical problem. Q At this time, do you see that it is an ethical problem? A Certainly."

In his report the referee found that the respondent had prepared the above-mentioned materials and that he had placed many of them in the region's newspapers or for broadcast by radio. The referee determined that Michaelis knew that many of the statements were false, deceptive or misleading, or that with ordinary care he should have known them to be false. The referee also found that Michaelis never brought the alleged acts of impropriety to the attention of the proper authorities, but that he consistently used the news media to make public denunciations of certain local attorneys and build up his own image by contrast. The lack of specifics in respondent's allegations, as well as the lack of any reasonable proof of his claims, suggests a malicious motive on the part of respondent, rather than a good faith attempt at fair and candid criticism.

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Neb. Rev. Stat. § 7-105 (Reissue 1977) provides that upon admission to the bar of this state, attorneys assume certain duties as officers of the court. Among the duties imposed upon attorneys is the duty to maintain the respect due to the courts of justice and to other judicial officers. This court has recognized and adopted the principles embodied in

the American Bar Association's Code of Professional Responsibility as a general statement of the standards of professional conduct required of a member of the Nebraska State Bar Association. Canon 1 of the code pertains to maintaining the integrity and competence of the legal profession. DR 1-102, promulgated thereunder, prohibits, among other things, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaging in conduct prejudicial to the administration of justice; or any other conduct adversely reflecting on the fitness of a lawyer to practice law. DR 1-103 further provides that any lawyer possessing unprivileged information of a violation of the code shall report such knowledge to the proper tribunal or other authority empowered to investigate or act upon the conduct of lawyers and judges.

DR 2-101 also provides that a lawyer shall not prepare, or cause to be prepared, any form of public communication which contains professionally self-laudatory statements. Also pertinent to this matter is Canon 8, which states that a lawyer should assist in improving the legal system. DR 8-102(B) provides that a lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer. The rationale for this disciplinary rule appears in Ethical Consideration 8-6, which provides in pertinent part: "Adjudicatory officials, not being wholly free to defend themselves are entitled to receive the support of the bar against unjust criticism. *While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms,* for unrestrained and intemperate statements tend to lessen public con



fidence in our legal system. *Criticisms motivated by reasons other than a desire to improve the legal system are not justified.*" (Emphasis supplied.)

As a defense to the charges listed above, the re-

spondent makes the following contentions: (1) That the statements attributed to him during the 1978 county attorney election were campaign rhetoric made during the heat and stress of a political campaign; (2) That to bring disciplinary proceedings against him for his expressions is an unconstitutional restraint upon his first amendment right to free speech; (3) That he acted in his capacity as a citizen and not as an attorney of record for a pending trial at the time the statements were made; and (4) That his comments and criticisms in this regard were made in good faith with the purpose of improving the legal system.

The respondent's assertion that he cannot be disciplined for his comments because they were protected expressions under the first amendment is an issue raised for the first time before this court. This issue requires a delicate balancing of the interests in upholding the integrity of our judicial system and in protecting the right of an attorney to free expression. In determining this balance, we will rely primarily upon the case law as formulated by other jurisdictions which have addressed this issue.

The U.S. Supreme Court addressed this issue generally in the case of *In Re Sawyer*, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959). In a five to four decision the Court held that the conduct of Sawyer, an attorney practicing in Hawaii, during a public speech did not impugn upon the integrity of a judge during a current Smith Act trial. The Court found that the lawyer's comments about the "shocking and horrible things that go on at the trial in a Smith Act case" were proper criticism of the law itself and the government's prosecutorial policy, and not personal criticism aimed toward the trial judge. In reviewing the case the Court began its discussion "with the proposition that lawyers



are free to criticize the state of the law." *Id.* at 631. The Court went on to state: "To say that 'the law is a ass, a idiot' is not

to impugn the character of those who must administer it. To say that prosecutors are corrupt is not to impugn the character of judges who might be unaware of it . . . ." *Id.* at 634. The Court also stated that a lawyer can properly criticize a judge's view of the law, as follows: "If [the judge] was said to be wrong on his law, it is no matter; appellate courts and law reviews say that of judges daily, and it impugns no disgrace. Dissenting opinions in our reports are apt to make petitioner's speech look like tame stuff indeed. *Petitioner did not say [the judge] was corrupt or venal or stupid or incompetent.* The public attribution of honest error to the judiciary is no cause for professional discipline in this country." (Emphasis supplied.) *Id.* at 635.

The Court also noted that "surely permissible criticism may as well be made to a lay audience as to a professional . . . ." *Id.* at 632. Finally, the Court noted: "A lawyer does not acquire any license to do these things by not being presently engaged in a case. *They are equally serious whether he currently is engaged in litigation before the judge or not.* We can conceive no ground whereby the pendency of litigation might be thought to make an attorney's out-of-court remarks more censurable, other than that they might tend to obstruct the administration of justice." (Emphasis supplied.) *Id.* at 636.

It is implicit in the statements of the Court as to the boundary of permissible criticism of the law and judiciary that instances can exist where an attorney's criticism or conduct would be impermissible and the subject of professional discipline. We note, as did the Supreme Court of Kentucky in *Kentucky Bar Ass'n v. Heleringer*, 602 S.W.2d 165 (Ky. 1980), and the Iowa Supreme Court in *Matter of Frerichs*, 238 N.W.2d 764 (Iowa 1976), that Justice Stewart was speaking for five members of the court when he stated in his concurring opinion: "If, as suggested by my Brother Frankfurter, there runs through the principal opinion an intimation that a lawyer can in-

voke the constitutional right of free speech to immunize himself from even-handed discipline for proven unethical conduct, it is an intimation in which I do not join. A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.

"*Obedience to ethical precepts may require abstention from what in other circumstances might be constitu*



*tionally protected speech.*" (Emphasis supplied.) 360 U.S. at 646-47.

Generally, the majority of the state courts which have addressed this issue concur that a person does not surrender his freedom of expression upon becoming an attorney. However, most jurisdictions have recognized that upon admission to the bar an attorney incurs the obligation to temper his criticism of the bench and bar in the manner allowed by the canons of professional ethics. As stated by the Kentucky Supreme Court in *Kentucky Bar Ass'n v. Heleringer, supra* at 168: "We are not alone in our opinion that by coming to the bar an attorney incurs the ethical obligation not to bring the bench and bar into disrepute by unfounded public criticism. 'Our system of justice rests upon the mutual regard of the bench and bar.' *Matter of Frerichs,* supra at 766. '[I]n the case of a lawyer an abuse of the right of free speech may be some index of his character or fitness to be a lawyer.' *In Re Lacey,* S.D., 283 N.W.2d 250, 252 (1979), *quoting In Re Gorsuch,* 76 S.D. 191, 75 N.W.2d 644, 57 A.L.R.2d 1355 (1956). 'Nor does free speech give a lawyer the right to openly denigrate the court in the eyes of the public.' *In Re Raggio,* 87 Nev. 369, 371, 487 P.2d 499, 500 (1971). *See also, In Re Glenn,* 256 Iowa 1233, 130 N.W.2d 672, 12 A.L.R.3d 1398 (1964); ABA Code of Professional Responsibility, EC 8-6; Annot., 12 A.L.R.3d 1408; Annot., 56 L.

Ed. 2d 841, 855-69. *But see, Justices of the Appellate Division v. Erdmann*, 33 N.Y.2d 559, 347 N.Y.S.2d 441, 301 N.E.2d 426 (1973); *State Bar v. Semaan*, Tex. Civ. App., 508 S.W.2d 429 (1974); *Polk v. State Bar of Texas*, N.D. Tex., 374 F. Supp. 784 (1974)."

In the case of *Matter of Frerichs, supra* at 769, the Iowa Supreme Court stated: "'A lawyer, acting in a professional capacity, may have some fewer rights of free speech than would a private citizen. As was well explained in *In re Woodward*, 300 S.W.2d 385, 393-394 (Mo. 1957):

'* * * Neither the right of free speech nor the right to



engage in "political" activities can be so construed or extended as to permit any such liberties to a member of the bar; respondent's action was in express and exact contradiction of his duties as a lawyer. A layman may, perhaps, pursue his theories of free speech or political activities until he runs afoul of the penalties of libel or slander, or into some infraction of our statutory law. *A member of the bar can, and will, be stopped at the point where he infringes our Canons of Ethics;* and if he wishes to remain a member of the bar he will conduct himself in accordance therewith. * * *' " (Emphasis supplied.)

In the recent case of *State v. Russell*, 227 Kan. 897, 610 P.2d 1122 (1980), the Kansas Supreme Court determined that an attorney could be disciplined for intentionally publishing known falsehoods while engaged in a campaign for public office. In addressing the first amendment free expression issue, the court stated at 901-02, 610 P.2d 1127: "Respondent notes that little authority can be found on the issue of professional discipline for political rhetoric directly implicating dishonesty under DR 1-102(A)(4). However, extensive treatment is afforded the issues of discipline of attorneys for publications made in the course of political campaigns for the election of judges. See annotations in 57 A.L.R.2d 1362 and 12 A.L.R.3d 1408. *An attorney may be disciplined for*

*criticism in the heat of a political contest if such criticism is carried beyond the limits of truth and fairness. In re Charles A. Thatcher,* 80 Ohio St. 492, 89 N.E. 39 (1909). Within that context the expression of opinion is protected if true or in good faith believed to be true, but when derogatory factual allegations are false and with ordinary care should have been known to be false, discipline may be imposed. *State, Board of Exam. v. Spriggs,* 61 Wyo. 70, 155 P.2d 285 (1945).

"In *State v. Nelson,* 210 Kan. 637, 640, 504 P.2d 211 (1972), this court stated: 'Concerning respondent's argument that DR 1-102(A)(5) creates an impermissible

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and chilling effect on "First Amendment freedoms," an examination of decisions on the point (12 A.L.R.3d, Anno., p. 1408) reveals the consensus to be that an attorney's right to free speech is tempered by his obligation to both the courts and the bar . . . .'

"In the case of *In re Baker,* 218 Kan. 209, 542 P.2d 701 (1975), a disciplinary proceeding arising out of a political campaign against an incumbent judge, this court held that *a challenger in a partisan election for judicial office is free to criticize an incumbent's record so long as the criticism is accurate.* However, a violation of ethics was found and the challenger was censured for publishing untrue statements concerning eligibility for a disability pension, which statements the challenger knew or could have known were false by reading an applicable state statute.

"Although a lawyer may speak out and state his opinions on current campaign issues without fear of jeopardizing his license to practice law, his First Amendment rights are not absolute. The guarantee of freedom of speech will not protect him from disciplinary action as a lawyer if he is guilty of known falsehood intentionally used and published for the purpose of misleading the voters and gaining personal advantage for himself or his candidate." (Emphasis supplied.)

We determine, as did the referee, that respondent's public attribution of unethical and illegal conduct on the part of the then incumbent Cuming County attorney and other named regional attorneys, charges respondent knew or should have known to be unwarranted, was unethical and unprofessional conduct tending to bring the bench and bar of this state into disrepute and tending to undermine the public confidence in the integrity of the judicial process. If respondent had reason to believe, in good faith, that the named individuals engaged in proscribed conduct, then he had the responsibility and obligation of notifying the office of the Counsel for Discipline of the Nebraska State Bar Association as provided in rule 8(a) of the



rules of this court.

Respondent has suggested that because he was not acting in his capacity as an attorney of record for a pending trial, the Code of Professional Responsibility should not apply to his conduct. We do not agree. This court has stated on several prior occasions that an attorney may be subjected to disciplinary action for conduct outside the practice of law or the representation of clients. *State ex rel. Nebraska State Bar Assn. v. Ledwith*, 197 Neb. 572, 250 N.W.2d 230 (1977); *State ex rel. Nebraska State Bar Assn. v. Bremers*, 200 Neb. 481, 264 N.W.2d 194 (1978); *State ex rel. Nebraska State Bar Association v. Walsh*, 206 Neb. 737, 294 N.W.2d 873 (1980). In this regard, we also note that Formal Opinion 336, Committee on Ethics and Professional Responsibility of the American Bar Association, dated June 3, 1974, holds that a lawyer is bound by the Code of Professional Responsibility in every capacity in which the lawyer acts, whether he is acting as an attorney or not. See, also, *Wright v. State ex rel. State Real Estate Comm.*, 208 Neb. 467, 302 N.W.2d 39 (1981).

We conclude that in the political advertisement dated April 13, 1978, as well as in the subsequent documents dated April 11, 1978, April 25, 1978, and

June 5, 1978, the respondent listed several factual charges of misconduct, illegal acts, and other violations of law by the then incumbent Cuming County attorney, various Cuming County officials, the city attorney of West Point, Nebraska, and several named attorneys practicing in the region which he knew or should have known with ordinary care to be false. Such conduct on the part of respondent was unprofessional and in violation of DR 1-102(A)(1), (4), (5), and (6). The respondent's statements also included several contrasting self-laudatory statements in which he criticized not only particular attorneys but the profession as a whole, and then built up his own image for truth and veracity. These statements, which may have been made for the purpose of attracting voters to his campaign, or,



potentially, clients to his legal practice, were in violation of DR 2-101(A). We would distinguish respondent's statements, however, from the general political rhetoric of election campaigns in that they were not made fairly or accurately upon the facts, and contained false representations. Other statements made by the respondent, while not in good taste, appear to be rhetoric so general in nature and apparently aimed at protesting the state of the law that they cannot be the basis for discipline under the holding of *In re Sawyer*, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959).

We now consider the proper discipline to be imposed upon respondent in this case. Although it is true that the referee in his report recommended that the respondent be suspended from the practice of law in this state for a period of 1 year, he also noted that respondent had not displayed any evidence of remorse or sorrow with regard to his conduct, or any assurances that it would not be repeated in the future. It should be noted that the original proceedings in this matter were commenced in 1978, and this matter is now being adjudicated in 1982, or approxi-

mately 4 years later. Apparently the respondent has failed or refused to profit from past experience and still is convinced that his past conduct was perfectly proper and ethical, and that he should not be penalized for his actions. We note with dismay that on January 14, 1982, after the submission of the case to this court for decision, he filed in the office of the Clerk of the Supreme Court two documents in which he continues to vilify certain attorneys, the bar generally, and the Nebraska Supreme Court. The first document, dated November 8, 1981, is entitled "RE: Attorney General's Office LIES to Nebraska Supreme Court." The document in question is too long to be included in full in this opinion, but we quote from certain pertinent excerpts thereof. In one paragraph he attacks the Attorney General and the assistant attorney general in this case, stating: "[Name omitted] and [name omitted] intentionally, and with criminal

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intent as in Watergate, engaged in a most blatant, easily perceivable, and massive coverup that puts Watergate, Richard Nixon, Abscam, and other government scandals to shame.

"In 1978, 1979, 1980, and 1981, Attorney Michaelis informed these corrupt State lawyers of each of the following." Thereafter, respondent repeats many of the same allegations and charges against various attorneys that were previously the basis of the action. He also alleges that the Nebraska Supreme Court refused to accept copies of his reply brief which we note was tendered in violation of the court rules with reference to its preparation. He also states in his memorandum as follows: "Why worry about organized crime in gambling, slot machines, horse racing, etc. when we have organized crime in the law itself? In the legal profession under the guise of the Nebraska Bar Association!!!"

The second document filed in this court on January 14, 1982, is dated December 15, 1981, and is entitled "NOTICE — CUMING COUNTIANS." After

referring to the Nebraska Supreme Court, respondent states: "Knowing the past and the politics by a few evil, greedy, corrupt and conniving local and regional lawyers, we do not have faith in that Court's ability to be fully honest, intelligent, unbiased, truthful, and competent. The people own that Court — they can dissolve that court!"

While respondent's acts subsequent to submission should not, perhaps, be considered in determining whether he has violated the Canons of Professional Responsibility, particularly DR 8-102(B), we believe it is perfectly proper to consider these subsequent events in determining what sanctions should be applied against him in this matter. Respondent has exhibited no remorse, change in attitude, or desire to cease his scurrilous attacks upon the bar and bench of this state. We are therefore of the opinion that the original recommendation of the referee of suspension is far too lenient and, if applied, would depreciate the seriousness



of his actions. His conduct clearly demonstrates that he is not fit to engage in the practice of law in this state and should be disbarred.

JUDGMENT OF DISBARMENT.

WHITE, J., not participating.

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VIRGIE J. HERMAN, APPELLANT, V.
LOIS J. LEE ET AL., APPELLEES.

210 Neb. 563

Filed February 12, 1982. No. 43435.

1. Legislative Power: Highways: Municipal Corporations. The state has inherent power to establish, maintain, and control the highways of the state, including those within corporate limits of municipalities. While the Legislature may properly delegate certain powers over streets, alleys, and highways to a municipality, it retains the power to legislate with reference thereto when a matter of statewide policy and concern are involved.

MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

| | |
|---|---|
| KEN LEE MICHAELIS, Appellant. | Case No. _____ |
| vs. | |
| NEBRASKA STATE BAR ASSOCIATION, also stated as State of Nebraska Ex Rel. NEBRASKA STATE BAR ASSOCIATION, | NOTICE OF APPEAL FROM NEBRASKA SUPREME COURT DECISION TO THE UNITED STATES SUPREME COURT and/or PETITION FOR WRIT OF CERTIORARI |
| Appellee/Respondent. | |

Comes now Ken Lee Michaelis, also known as Kenneth Lee Michaelis, Respondent in Nebraska Supreme Court Case No. 42820 (Opinion cited as 210 Neb. 545) and does give Notice to you and to the Nebraska Court that Ken Lee Michaelis is hereby appealing the JudgMent of Disbarment as a Nebraska Lawyer stated by the Nebraska Court as being "filed February 12, 1982"; said judgment being appealed to the constitutional and constitutionally endowed Supreme Court of the United States.

This Notice of Appeal includes herein, at the discretion of the United States Supreme Court, a Petition for Writ of Certiorari.

Appellant, under oath, does hereby state as follows:

1. That appellant herein did on March 12, 1982, personally deliver to the Nebraska Attorney General's office and the Nebraska Supreme Court "MOTION FOR AN ORDER TO STAY THE ISSUANCE OF ANY AND ALL MANDATES and/or MOTION FOR AN ORDER TO RECALL AND TO RETRACT ANY AND ALL MANDATES BASED UPON APPEAL AND WRIT TO UNITED STATES SUPREME COURT". (See Exhibit "1", attached).

Appellant received from the Deputy Nebraska Attorney General a Receipt and an acknowledgment of receiving said Motions. Appellant did also execute a Proof of Service. Thereafter, all of these papers and documents were personally filed with the Nebraska Supreme Court on March 12, 1982.

That appellant's mother, Sylvia Michaelis, was dying throughout and did die on March 23, 1982, after an extended and prolonged illness.

That during the period of bereavement, on or about March 30th or April 6th, 1982, the Nebraska Supreme Court sent to appellant a very flimsy and saturated postcard stating that appellant's aforestated Motions were denied or statements comparable in effect!

2. That appellant herein, Ken L. Michaelis, did personally deliver to the Nebraska Attorney General a "Notice of Appeal and Writ of Certiorari to the United States Supreme Court" on March 12, 1982 and thereafter appellant personally filed the Original of said Notice of Appeal and Writ along with the "Notice of Hearing and Proof of Service" with the Nebraska Supreme Court, again on March 12th.

3. That appellant did not receive any proper legal Notice or service, not even a courtesy Notice, from the Nebraska Supreme Court that any Judgment of Disbarment as a Nebraska lawyer occurred on or about February 12, 1982. Not even to this very date!

That on February 12, 1982, the Nebraska Supreme Court caused and did deliberately cause the Nebraska news media, the Associated Press, and the United Press International news services, including statewide television and radio to announce that the Nebraska Supreme Court had disbarred lawyer Ken L. Michaelis for various statements of a political and governmental nature he had made to the press earlier!

The Nebraska Court's biased, intentionally distorted, and wrong statements (Undoubtedly, "intentionally" wrong to gain desired public silence and acquiescence) were blasted throughout the States of Nebraska and Iowa to appellant's personal knowledge. This is how appellant learned of the Nebraska Court's action!

Many Nebraskans and some Iowans saw through this biased attempt to manipulate the news. Many Nebraskans throughout the whole state communicated their strong disgust and anger to the appellant!

4. On said February 12, 1982, appellant travelled the 75 miles from his West Point, Nebraska home with his wife and two sons to Omaha, Nebraska to visit his then dying mother in an Omaha hospital. His mother died March 23, 1982 amidst all of this evil controversy!

In order to find out what was being broadcasted on that February 12th, 1982, a Friday, appellant finally asked for and obtained a copy of the Nebraska Supreme Court opinion from Nebraska's largest daily newspaper, the Omaha World Herald. Said newspaper, through their reporter, was shocked that the Nebraska Supreme Court had not given any proper due legal Notice or any proper courtesy to the appellant.

5. No proper Notice, Service, or Proof of Service upon the Appellant exists for none can exist.

6. That said Nebraska Supreme Court apparently alleges Judgment of Disbarment as a Nebraska lawyer occurred on February 12, 1982 (See 210 Neb. 545).

APPEAL AND PETITION FOR CERTIORARI to the Supreme Court of the United States is hereby taken based upon the following infractions of the Constitution of the United States, the Constitution of the State of Nebraska, and applicable federal statutes:

1. The alleged judgment by the Nebraska Supreme Court is a massive violation of Constitutional due process, both substantive and procedural due process (Fifth and Fourteenth Amendments to U.S. Constitution).

2. The alleged judgment by the Nebraska Supreme Court is a massive violation of Constitutionally guaranteed freedom of speech, freedom of ideas, freedom of press, freedom of personal conscience, freedom of personal decency, and freedom of ethical human rights and basic and fundamental civil liberties! (First, Fifth, and 14th Amendts)

3. The alleged judgment is a massive violation of Constitutionally protected rights to livelihood, property, and means to make a living!

(First, Fifth, Seventh, and 14th Amendments to U.S. Constitution).

4. Massive constitutional violation by the Nebraska Supreme Court of all relevant Constitutional standards dealing with void for vagueness, ambiguity, arbitrariness, caprice, malice, along with a blatant and fraudulent misrepresentation of the controlling United States Supreme Court case: In the Matter of Disciplinary Proceedings Against Harriet Bouslog Sawyer, a lawyer; 360 U.S. 622, 3 L Ed 2d 1473, 79 S Ct 1376, a 1959 case. (First, Fifth, and 14th Amendments to U.S. Constitution);

5. Constitutional conflicts of occupational interests, occupational bias, and sadly occupational coverup and whitewash by the Nebraska Supreme Court. Creating unconstitutional double standards for Nebraska lawyers where total equality is mandatory by the Supreme law of our land, the Constitution of the United States and of the State of Nebraska!

6. Unconstitutional double standards for Nebraska lawyers by pursuing silencing of any and all criticisms about Nebraska lawyers and Nebraska judges but not merely allowing, but even encouraging, false praise and outlandish lies and distortions about Nebraska lawyers, judges, and the Nebraska legal profession. Silencing and persecuting truthful Nebraska lawyers who must, should, and have the duty to our nation, its people, its constitution, its government, and to progress itself to speak one's mind and the facts and the law to the people.

7. Pretensions by the Nebraska Bar Association and the Nebraska Supreme Court to have investigated for the truth in these matters when in total reality neither desires any of the truths to be discovered, determined, proven, or communicated to the public. There were never any investigations to determine the truth - for no desire for the truth about many typical Nebraska lawyers, especially those stated!

8. Unconstitutional shifting of the burdens of proof by pretending no burden of proof existed for the appellees/relators. Occupational

distortions, misrepresentations, and statements made by the Nebraska Bar Association and thereafter by the Nebraska Supreme Court, members of said Bar, made without any basis in law, reason, fact, common sense, or even fiction. (First, Fifth, Seventh, and 14th Amendments).

9. Massive violations of Constitutional First Amendment rights of free speech, free expression, free ideas, free beliefs, and free press and free thinking without in the least any showing of the following:

A. A compelling state interest in behalf of the common welfare and safety of the people.

B. No showing of any clear and present danger - none whatsoever!

C. No showing of any specific falsehoods for none exists. Use of the god-like declarative statement that something is false without any proof or basis in fact or evidence to so state any falsehood.

Nebraska Bar Association and the Nebraska Supreme Court had to create a case to get to the desired result - silence the truth!

D. No showing that something that is definitely false was known by appellant to be false, was important for it not to be false, or that the false statement was said without any regard for its truthfulness or veracity.

10. Violations of the Federal Anti-Trust Acts (Sherman Anti-Trust laws, etc.) and other federal laws dealing with truth in advertising, monopolistic practices, occupational corruption, cartels, feudal practices of false privilege, etc. that stand in direct opposition to all democracies including the American democracy; to-wit; a republic!

KEN LEE MICHAELIS, Appellant.

s/ Ken Michaelis

STATE OF NEBRASKA )
) ss.
County of Cuming )

Ken L. Michaelis, being first duly sworn, does state under oath

that he has read the prior and foregoing Notice, knows the contents thereof and that everything therein stated is the truth as he verily believes and knows to be true.

Ken L Michaelis

AFFIDAVIT OF SERVICE OF DOCUMENT

I, Ken L. Michaelis, appellant and acting as my own attorney, pro se, do hereby state under oath in accordance with Rule 28 that on this date I personally served a signed copy of the aforestated document to all parties required to be served by mailing the same by U.S. mail, Certified and first-class postage prepaid, to-wit:

Nebraska Supreme Court
State Capitol Building
Lincoln, NE 68509

Nebraska Attorney General
2115 State Capitol Building
Lincoln, NE 68509

Dated this 11th day of May, 1982, at West Point, Cuming County, Nebraska.

Ken L Michaelis

The above two signatures of Ken L. Michaelis were subscribed and sworn to before me, a duly authorized Notary Public for this County and State on May 11th, 1982.

GENERAL NOTARY - State of Nebraska
CONNIE J. PFEIFER
My Comm. Exp. April 26, 1986

Connie J. Pfeifer
Notary Public

My commission expires April 26, 1986.

MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA - includes the people!

Nebraska State Bar Assoc., )
RElator, )
vs. )
Ken L. Michaelis, Attorney at Law, )
Respondent. )

Case No. 42820

NOTICE OF APPEAL AND WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Comes Now, Ken L. Michaelis, and personally notices to this tribunal that he is presently, along with proper Washington counsel, undertaking an appeal in this matter by Writ of Certiorari and of Appeal to the Supreme Court of this great nation founded and nurtured by Jefferson, Madison, Washington, Lincoln, etc. against petty tyranny.

This constitutes Notice that said matter is presently in direct violation of over forty-six (46) United States Supreme Court decisions and precedents and your tribunal has decided this contrary to the Constitution of the United States as interpreted by the United States Supreme Court and as interpreted by over forty (40) other Supreme Courts of at least forty "enlightened" and matured intellectually and democratically States of this great Union. This is our Appeal and Notice thereof. Prior notice already given!

Ken L. Michaelis, Lawyer for Agriculture, the people, and of and by the people of Nebraska, Respondent;

Ken L Michaelis

Case No. 42820

SAME, )
)
SAME, )
)

MOTION FOR AN ORDER TO STAY THE ISSUANCE OF ANY AND ALL MANDATES and/or MOTION FOR AN ORDER TO RECALL AND TO RETRACT ANY AND ALL MANDATES BASED UPON APPEAL AND WRIT TO UNITED STATES SUPREME COURT

Comes Now Ken L. Michaelis, the people's lawyer herein and throughout, and does hereby state without any equivocation in light of all elements of intellectual law, democracy, and jurisprudence and logic, that many severe federal constitutional questions - the Supreme Law of our Land - exists in this matter that constitute singularly and collectively the very core, foundation, and essence of this great nation's democracy; hence the Constitution of the United States has been massively violated, to-wit:

1) Massive violation of Constitutional due process; both substantive and procedural due process.

2) Massive violation of Constitutionally guaranteed freedom of ideas.

3) Massive violation of Constitutionally guaranteed and protected freedom of speech!

4) Massive violation of Constitutionally guaranteed and protected freedom of press!

5) Massive violation of Constitutionally guaranteed and protected freedom of personal conscience, decency, and ethical human rights and civil liberties!

6) Massive violation of Constitutionally protected freedom of privacy, freedom of personage, and of livelihood and of family rearing and family providings.

7) Massive violation of Constitutionally protected and guaranteed freedom of life, liberty, and the pursuit of decency and happiness.

8) Massive violation of Constitutionally protected and guaranteed rights to livelihood, property, and means to make a living.

Exhibit "1" Pg. 1 of 3

9) Massive and 100% certain violation - CONSTITUTIONAL VIOLATION - of all Constitutional Standards dealing with void for vagueness, ambiguity, Arbitrariness, Caprice, Malice, and Judicial misrepresentation of the Harriet Boslaugh Sawyer U.S. Supreme Court decision of 1959.

10) Massive Constitutional conflicts of occupational interests, occupational bias, occupational coverup, and occupational whitewash - DOUBLE STANDARDS FOR LAWYERS AND JUDGES WHERE TOTAL EQUALITY IS MANDATORY BY THE SUPREME LAW OF OUR LAND!

11) Unconstitutional double standards for lawyers in pursuing an unconstitutional game of intrigue, whitewash, and coverup in silencing truthful lawyers who must, should, and have the duty to our nation, its people, its constitution, its government, and to progress to speak our minds and our facts and law to the people - The truly greatest Supreme Court in a democracy!

12) Massive pretensions to have investigated for the truth - but in reality no truth desired so no investigations and thus the COVERUP AND THE WHITEWASH!

13) Unconstitutional shifting of the burdens of proof by pretending no burden of proof exists. Occupational lies, fraud, distortions, misrepresentations, and statements made without any basis in law, reason, common sense, or fact or even fiction!

14) Massive violations of Constitutional First Amendment rights without the least showing: a. of a compelling state interest in behalf of the common welfare and safety of the people; b. no showing of any clear and present dangers; c. no showing of any specific falsehoods - just the god-like statement something is false by false lying, distortion, fraud, misrepresentation, false labeling, and ABSOLUTELY NO INVESTIGATION TO DETERMINE THE TRUTH! d. No showing that something that is false was known to be false, was important for it not to be false, and that it was said with any regard for its truthfulness or veracity. A COVERUP AND A WHITEWASH BY A VESTED OCCUPATIONAL BIAS.

15) Massive violations of the Sherman Anti-Trust and other federal laws dealing with truth in advertising, occupational corruption, monopolistic laws and false interpretations to protect the occupational bias of judges as lawyers, etc. Massive violations of all Anti-Trust federal laws - a feudalistic cartel without any basis for its existence other than being the occuption of all judges, that is, the legal profession!

Occupational control to silence any and all truths and/or means to obtain the truths about lawyers, judges, and public officials - thus establishing the very government of feudalism that Jefferson and Washington and Adam's Revolutionary War was fought over and about in 1776 to 1781.

RESPONDENT STATES that no service was had upon Respondent concerning any opinion of this tribunal on or about February 12, 1982. Respondent was in Omaha, Douglas County, Nebraska, that date! The Media, AP, UPI, Omaha World Herald, Lincoln Journal, Lincoln Star, etc. were all purposely served with the opinion - an opinion of known gobbledygook by its very own authors!

WHEREFORE, Ken L. Michaelis, lawyer, family man, traditionalists in the law, Jeffersonian, Constitutionalists, and populist of the people, does hereby move that any and all mandates herein be stayed to serve but one cause that to this date has always been trampled upon: TRUTH, KNOWN AND EASILY DETERMINABLE AND PROVEN TRUTH, AND JUSTICE ITSELF! Furthermore, that any other mandates be retracted and/or recalled and dissolved pending the Appeal and writ of certiorari to the great Court founded and created by the even better and greater Constitution of the United States; that is, the United States Supreme Court.

/s/ K L Michaelis, Respondent.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA - hopefully, in a democracy, that is a Court of the mass People!

| | | |
|---|---|---|
| Nebraska State Bar Associ, | ) | Case No. 42820 |
| Relator, | ) | |
| -vs- | ) | NOTICE OF HEARING AND PROOF OF SERVICE AS TO ATTACHED MOTIONS/MOTIONS TODAY FILED AND FILED PRIOR. |
| Ken L. Michaelis, | ) | |
| Respondent, | ) | |

To: Paul Douglas, politician, Attorney General for Vested-Conflicts of Interests, etc. and his taxpayer paid staff of too-damn many lawyers.

Please take notice that the prior Motions filed or being filed herein by Respondent will be called for hearing before the alleged people's and taxpayer's Supreme Court of the State of Nebraska on the first day of the next regular session of said tribunal on whichever date is applicable and at the time applicable (Which you will know with ten lawyers helping you and the court - but we will not) unless you earlier agree or stipulate to allowing said Motions to be considered as allowed and confessed without the Court having to waste time hearing the same.

Ken L Michaelis

PROOF OF SERVICE

State of Nebraska)
Lancaster County ) ss

I, Ken L. Michaelis, one lawyer who can be believed without having to take an oath, being first duly sworn, do depose and state that I personally delivered the Notice of Hearing, Notice of Appeal, & the accompanying Motions for an Order & Stay, etc.
to the Nebraska Attorney General's Office, State Capitol Building, Lincoln, NE 68509.

Dated this March 12, 1982.

Ken L Michaelis

SUBSCRIBED before me this March _____, 1982.

Notary Public/

Exhibit "1" By 3 of 3

81-6710

MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

KEN L. MICHAELIS, )
Appellant, )
-vs- )
NEBRASKA STATE BAR ASSOCIATION, )
Appellee. )

Case No. _____

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS
WITH AFFIDAVIT

Comes now Ken L. Michaelis, appellant in this action, and does hereby respectfully request leave of this Court to proceed in this matter of an appeal of appellant's disbarment as a practicing Nebraska lawyer by in forma pauperis.

Appellant states that in no way does appellant want this Motion to hinder in any way appellant's chances of this case being accepted for Writ of Certiorari or for Appeal. Appellant would sooner withdraw this Motion but has no other avenues to financially proceed unless something would be acceptable for and as surety.

Appellant states that as soon as appellant or his wife can obtain further funds, appellant shall proceed in this matter in the normal course to include payment of prior costs.

Appellant's struggles with the Nebraska Bar Association, the appellee herein, have occurred for in excess of four (4) years. This has been very costly in monetary and emotional terms to include the premature birth of appellant's infant son which almost died. Sustaining said infant's life has cost in excess of $17,000.

This whole drama and struggle, conflict, and public controversy herein has been completely at the behest, determination, whim, caprice, motivation, and drive of the appellee or those few lawyers controlling the appellee in this matter.

It is perceived and has been suspected since 1977 when lawyers Pliny Moodie and Robert D. Moodie obstructed appellant's attempts to obtain the proper building permit that the small segment of lawyers involved in the Nebraska State Bar Association that have spearheaded this longstanding campaign against the appellant, to include attempting to have appellant suspended as a lawyer on the grounds of being "mentally ill" without having even a semblance of

proof or evidence to substantiate such a drastic charge, these few lawyers decided already in 1978 they would eventually win this matter because appellant's financial resources were quite limited.

That small group of Nebraska lawyers undoubtedly felt they could exhaust all of Appellant's resources and thus not merely destroy appellant but destroy his livelihood no matter what the merits of the issues herein. Appellant and his wife perceived this tactic of lawyer Moodies already in 1977 and saw it carry over into this matter in 1978 and thereafter continuously!

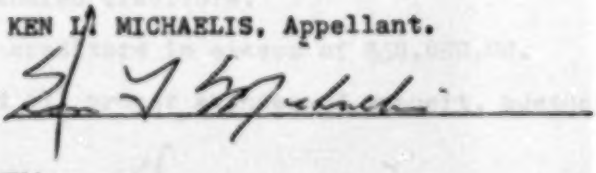
Appellant has not proceeded in this matter or any matter prior in forma pauperis.

Appellant's resources having been depleted, appellant was forced to act pro se as his own lawyer in this disbarment matter and hearing before the Nebraska Supreme Court.

The intrigue by certain few members of the Nebraska Bar Association in these matters are fairly well substantiated since 1978. (Since 1977 as pertains to lawyers Pliny Moodie and Robert D. Moodie). This intrigue has cost appellant and his family dearly.

Appellant has never filed any prior Motion for leave to so proceed in forma pauperis. Appellant has pride, even false pride, in his reluctance to so request. In this instance appellant has little or no choice!

KEN L. MICHAELIS, Appellant.



STATE OF DISTRICT OF COLUMBIA
County of _____

AFFIDAVIT BY APPELLANT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Ken L. Michaelis, appellant in this matter dealing with the disbarment of appellant as a practicing Nebraska lawyer by the Nebraska Supreme Court, do hereby state under oath as follows:

1. Appellant has searched several law libraries these past two days in seeking the applicable Form 4 set forth in the Federal Rules of Appellate Procedure. Appellant could not locate any set of said text. Time did not allow him to contact a federal court!

2. Appellant did borrow from another local lawyer a United States Code Annotated. This affidavit results from said text.

3. Appellant's disbarment as a lawyer by the Nebraska Supreme Court is based entirely upon appellant's use of speech, his beliefs, ideas, and expressions during and after a political campaign.

Appellant strongly believes that the Nebraska Supreme Court has acted arbitrarily, with possible caprice and even malice, in disbarring the appellant. Appellant's disbarment is in violation of Constitutional freedoms of speech, press, free ideas, free thinking, freedom of conscience, and free expression.

4. Appellant's and his wife's financial resources have been totally drained and exhausted by a continuous attack and intrigue by certain Nebraska lawyers who have exploited the appallee over the past four, if not longer, years.

5. Appellant has no present means to support himself, his wife, and his children of very tender years. Appellant has obtained no acceptances of his efforts to obtain any proper employment since the judgment of disbarment was blasted all over the Nebraska media.

Continuous newspaper and media coverage and exploitation by appellee of this controversy with the Nebraska Supreme Court has hampered appellant greatly in his attempts to seek sustenance and a substitute livelihood for his family and wife and himself.

6. Appellant has borrowed upwards of $13,000 already just to fight this continuing, long controversy. Appellant presently owes in excess of $33,000 to unsecured creditors.

Appellant owes secured creditors in excess of $50,000.00.

Appellant has exhausted all proper avenues of support, sustenance, and borrowing.

DATED THIS MAY 13th, 1982. /s/ Ken L. Michaelis

SUBSCRIBED AND SWORN To before me this May 13, 1982.

/s/ Edward A. Fricke

My commission expires Aug 14, 1982.

AFFIDAVITT OF PROOF OF SERVICE

I, Ken L. Michaelis, appellant herein acting pro se, do hereby state under oath that on May 12, 1982, I personally served a copy of this Motion and Affidavit, supra, upon the NEBRASKA STATE BAR ASSOCIATION; c/o Nebraska Attorney General, 2115 State Capitol

Building; Lincoln, NE 68509 by personally mailing the same in the U.S. Mail, postage prepaid, first-class.

Glen T. Mitchell

SUBSCRIBED AND SWORN to before me this May 13, 1982.

Richard K. Fairchild

My Commission expires Aug. 14, 1982.